

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MARCOS UNIFIED SCHOOL
DISTRICT AND BANYAN TREE
FOUNDATIONS ACADEMY.

OAH CASE NO. 2013010566

ORDER SEEKING ADDITIONAL
INFORMATION FOR MOTION FOR
STAY PUT

On January 18, 2013, Student filed a motion for stay put with the Office of Administrative Hearings (OAH) against the San Marcos Unified School District (District) and Banyan Tree Foundations Academy (Banyan) that requested that Student continue to receive one-to-one academic teaching. The District did not file a response.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)¹; Ed. Code, § 56505 subd. (d).) This is referred to as “stay put.” For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, “specific educational placement” is defined as “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs,” as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

DISCUSSION and ORDER

Student's motion for stay put includes her last agreed upon and implemented IEP, May 2012, as modified in July 2012, and contends that the parties had not agreed upon an appropriate resolution of Student's educational program after the recent IEP team meeting to discuss Student's most recent assessments. However, Student's motion does not allege that the District or Banyan has informed Parent that it will no longer implement Student's last agreed upon and implemented IEP. Therefore, by 5:00 p.m. on February 1, 2013, the parties shall provide to OAH further information as to whether the District or Banyan is presently seeking not to implement Student's last agreed upon and implemented educational program. Each party shall include sworn declarations supporting any factual assertions included in its briefing.

IT IS SO ORDERED

Dated: January 28, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings